

STATE OF INDIANA)
COUNTY OF MARION)

IN THE MARION CIRCUIT/SUPERIOR COURT
SS: CAUSE NO. 490070608PL034560

STATE OF INDIANA,)
Plaintiff,)

v.)

LIBERTY PUBLISHING, INC.,)
also doing business as)
BOOSTER CLUB PRODUCTIONS,)

Defendant.)

FILED



AUG 21 2006

Dana Lynn Holler
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court, pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. The Defendant, Liberty Publishing, Inc., also doing business as Booster Club Productions ("Defendant"), is an Illinois corporation that has regularly solicited businesses throughout the State of Indiana, including businesses located in Hendricks, Lake, and Marion County, to purchase advertising space on posters displaying the schedules of local high school athletic teams, from its principal place of business located at 616 Abington Street, Peoria, Illinois, 61603.

3. When, in this Complaint, reference is made to the Defendant, such allegations shall be deemed to mean the principals, agents, representatives, or employees of the Defendant did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of the Defendant and while acting within the scope of their duties, employment, or agency.

FACTS

4. At least since December 29, 2004, the Defendant has engaged in the solicitation of advertising space on posters displaying the schedules of local high school athletic teams.

5. During its solicitation of Indiana businesses, the Defendant represented the proceeds from the sales of advertisements would benefit the local high school and/or the local high school athletic booster club.

A. Allegations Regarding the Defendant's Transaction with the Schaefer.

6. On or about December 29, 2004, the Defendant solicited Brian and Denita Schaefer ("The Schaefer") of Indianapolis, Indiana, to purchase advertising space on a poster displaying the Warren Central High School football schedule.

7. The Defendant represented to the Schaefer the advertising was a fundraising effort designed to benefit Warren Township Schools ("Warren Schools").

8. The Defendant also represented to the Schaefer Warren Schools had approved the advertising.

9. The Defendant further represented to the Schaeferes a sizable portion of the fee would be donated to the Warren Schools.

10. Based upon these representations, the Schaeferes placed two separate ads with the Defendant and paid a total of Five Hundred and Ten Dollars (\$510.00), with a Two Hundred and Sixty Dollars (\$260.00) payment made on December 29, 2004 and a Two Hundred and Fifty Dollars (\$250.00) payment made on May 4, 2005.

11. In May of 2005, the Defendant sent a check to Warren Schools, in the amount of Fifty Dollars (\$50.00).

12. Upon information and belief, Warren Schools neither received a "sizable portion" of the fees paid to the Defendant, nor did it authorize the use of the name "Warren Schools" in the solicitation of the Defendant's advertisements.

B. Allegations Regarding the Defendant's Transaction with Doug Mattox.

13. On or about October 13, 2005, the Defendant solicited Doug Mattox ("Mattox") of Brownsburg, Indiana, to purchase advertising space on posters displaying the Avon and Brownsburg High School football schedules.

14. The Defendant represented to Mr. Mattox the advertising would a fundraiser for the Booster Club.

15. The Defendant also represented, "We distribute up to 3,000 schedules to all of the high traffic areas in town, such as banks, restaurants, grocery stores, gas stations, realtors, etc. Also, everyone who places an ad will receive a free supply as well, once they are printed."

16. Brownsburg High School does not have a booster club, but does have a Mom's Club, which supports the local football team.

17. Upon information and belief, neither Brownsburg High School, nor the Mom's Club, authorized, or received any benefit from the sale of advertisements on the Defendant's calendars.

18. Furthermore, upon information and belief, the Defendant did not widely distribute the calendars as originally represented.

C. Allegations Regarding the Defendant's Transaction with Larry Hamm.

19. On or about October 24, 2005, the Defendant solicited Larry Hamm ("Hamm") of Speedway Baptist Church in Speedway, Indiana, to purchase advertising space on calendars displaying the Speedway High School 2006 Football schedule.

20. The Defendant's represented to Pastor Hamm it was calling on behalf of the Speedway High School Booster Club.

21. Based upon this representation, Pastor Hamm agreed to purchase advertising space.

22. Upon learning Speedway Schools were not affiliated with the Defendant, Pastor Hamm called the Defendant and cancelled his order.

23. A supervisor advised Pastor Hamm his order had been cancelled.

24. Despite assurances of the cancellation, Pastor Hamm received several invoices and phone calls from the Defendant demanding payment for the cancelled advertisement.

25. Upon information and belief, Speedway High School and its booster club, neither authorized, nor received, any benefit from the sale of advertisements on the Defendant's calendars.

D. Allegations Regarding the Defendant's Transaction with Sherri Ham.

26. On or about January 12, 2006, Sherri Ham ("Ham") of Crown Point, Indiana, was solicited by the Defendant to purchase advertising space on calendars displaying the Crown Point High School Football schedule.

27. The Defendant represented to Ms. Ham the calendars would benefit Crown Point High School.

28. Based upon this representation, Ms. Ham placed an order for an advertisement in the Defendant's calendar and paid Two Hundred Fifty Dollars (\$250.00) on January 12, 2006.

29. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale it would publish and deliver the calendars within a reasonable period of time.

30. Upon information and belief, Crown Point High School did not authorize or benefit from the sale of advertisements on the Defendant's calendars.

31. Ms. Ham has yet to receive either the promised calendars, or a refund from the Defendant.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

32. The transactions identified in paragraphs 6, 13, 19, and 26, are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(1).

33. The Defendant is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).

34. The Defendant's representations to persons the transactions had sponsorship, approval, characteristics, or benefits, when the Defendant knew or reasonably should have known the transactions did not have such, as referenced in paragraphs 7, 8, 9, 14, 15, 20, 23, 24, 27, and 29, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

35. The Defendant's representation to Mattox that up to Three Thousand (3,000) schedules would be distributed throughout town, when the Defendant knew or reasonably should have known it did intend or reasonably expect to distribute that many schedules, as referenced in paragraph 15, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(4).

36. The Defendant's representations to persons it was affiliated, or otherwise acting on behalf of the local schools, when the Defendant knew or reasonably should have known it did not have such sponsorship, approval, or affiliation with the schools, as referenced in paragraphs 7, 8, 14, 20, and 27, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(7).

37. The Defendant's representation to Hamm it would cancel the order, when the Defendant knew or reasonably should have known the transaction did not have any such rights or remedies, as referenced in paragraph 23, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

38. The Defendant's representation to Ham it would complete the subject of the consumer transaction within a reasonable period of time when the Defendant knew or reasonably should have known it would not, as referenced in paragraph 29, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(10).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

39. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-38 above.

40. The misrepresentations and deceptive acts set forth in paragraphs 7, 8, 9, 14, 15, 20, 23, 24, 27, and 29, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Liberty Publishing, Inc., also doing business as Booster Club Productions, enjoining the Defendant, its agents, representatives, employees, successors, and assigns from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have, which the Defendant knows or reasonably should know it does not have;
- b. representing, expressly or by implication, the subject of a consumer transaction will be supplied to the public in greater quantity than the Defendant intends or reasonably expects;
- c. representing, expressly or by implication, the Defendant has a sponsorship, approval, or affiliation in a consumer transaction it does not have, when the Defendant knows or reasonably should know it does not have such;

- d. representing, expressly or by implication, the subject of a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and the Defendant knows or reasonably should know the representation is false; and
- e. representing, expressly or by implication the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know it cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

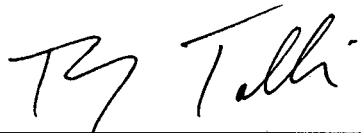
- a. cancellation of the Defendant's unlawful contracts with all consumers, including, but not limited to, the persons identified in paragraphs 6, 13, 19, and 26, pursuant to Ind. Code § 24-5-0.5-4(d).
- b. Restitution, pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of funds remitted by aggrieved persons for the purchase of the Defendant's services, including, but not limited to, the persons identified in paragraphs 6, 13, 19, and 26.
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

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